

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 788 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DEVIKABEN SANJAYBHAI PANCHAL

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR JANI Ld. AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 18/06/98

ORAL JUDGEMENT

The petitioner-Devikaben Sanjaybhai Panchal has challenged the order of detention dated 8.12.1997 passed under section 3(2) of the Prevention of Anti-social Activities Act, 1985 by the Police Commissioner, Baroda city branding her as bootlegger within the meaning of section 2(b) of the Act in this petition under Article 226 of the Constitution of India

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on 7 prohibition cases filed against the detenu. Four cases, out of Seven Cases are pending for trial, while three cases are pending investigation. It is alleged against the petitioner that the petitioner is involved in illegal activities of selling liquor and for that the petitioner and her associates bring liquor by scooter, auto-rickshaw, cycles and other rented vehicles from the villages namely Baliapura, Vadadaaala, Talrat and Vadsar. They also bring english liquor by Ambassador, Metador and Tempo from Maharashtra, Rajsthan and Madhya Pradesh and stored liquor in the house of petitioner and other houses. Over and above the 7 prohibition cases, a reliance is placed on the statements of three witnesses for the alleged incidents of dated 18.11.1997, 20.11.1997 and 21.11.1997. Reading the said statements, it appears that the petitioner and her associates asked the witness to carry the bags of liquor in the rickshaw and on refusal by the witness, he was beaten. Similarly, other witness was also beaten on the ground that he is giving information about the nefarious activities of the petitioner and her associates to the police. In the same way, one more rickshaw driver was beaten when he refused to accept the request of petitioner to carry the bags of liquor. On all the incidents, number of people gathered to see the incident and subsequently run away when the associates of the petitioner ran after them with the deadly weapons and, therefore, a rain of terror was created, hence the breach of public order.

Ms JC Bhatt learned advocate for the petitioner has submitted that the alleged activities of the petitioner even if are accepted on their face value, the same shall not be treated as the breach of public order, and, therefore, the satisfaction arrived at by the detaning authority branding the petitioner as bootlegger is not genuine and, therefore, the order of detention vitiates. In support of her submission, a reliance is placed on the decision of Supreme Court in the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City & Anr., reported in AIR 1989, SC p. 491. In almost an identical case, like the present one, the Supreme Court in the said case has observed as under:

"It may be that the detenu is a bootlegger within the meaning of Sec. 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-sec.(4) of S. 3 of the Act, his activities as a bootlegger affect

adversely or are likely to affect adversely the maintenance of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order.'

In the grounds of detention, it was alleged that the detenu was a prohibition bootlegger, and that by indulging in use of force and violence and by illegal sale of liquor, the detenu created an atmosphere of fear and terror by beating innocent citizens. It was also alleged that the detenu is indulging in anti-social activities, and that the activities were against public order. Apart from some minor incidents of beating by the detenu the witnesses alleged that the detenu was high handed and fierce by nature; his high handedness and bickering nature caused terror to the public of the area; he was not afraid of the police; his activities were anti-social; he always kept with him a knife and a revolver and he threatened surrounding people."

After observing this, it was held that the offence alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. The order of detention could not, therefore, be upheld. Applying the said judgment in the present case, I am of the opinion that the order of detention on the ground alleged could not be upheld.

In the result, the petition is allowed. The impugned order of detention dated 8.12.1997 is set aside. The petitioner-detenu is ordered to be released forthwith

if she is not required for any other lawful reason. Rule made absolute with no order as to costs. At the request of learned advocate for the petitioner, the writ of this order be sent to the Superintendent, Central Jail, Sabarmati, Ahmedabad.
